

**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

JEFFREY ROBERTS,

Petitioner,

vs.

DAVID B. LONG,

Respondent.

CASE NO. 14cv0427-WQH (DHB)

ORDER

HAYES, Judge:

The matters before the Court are the Motion to Dismiss the Amended Petition for Writ of Habeas Corpus (ECF No. 19) filed by Respondent David Long and the Report and Recommendation (ECF No. 22) issued by United States Magistrate Judge David H. Bartick.

**I. Background**

On February 24, 2014, Petitioner Jeffrey Roberts, a state prisoner proceeding *pro se*, filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. section 2254. (ECF No. 1). On September 29, 2014, Petitioner filed the First Amended Petition for Writ of Habeas Corpus. (ECF No. 17). On October 20, 2014, Respondent filed the Motion to Dismiss the Amended Petition for Writ of Habeas Corpus. (ECF No. 19). On November 6, 2014, Petitioner filed an opposition. (ECF No. 21). On April 14, 2015, United State Magistrate Judge David H. Bartick issued the Report and Recommendation, recommending that the First Amended Petition be dismissed with prejudice and recommending that the Court decline to construe the First Amended

1 Petition as a civil rights complaint pursuant to 42 U.S.C. section 1983. (ECF No. 22).  
2 The docket reflects that no objections have been filed to the Report and  
3 Recommendation.

## 4 **II. Discussion**

5 The duties of the district court in connection with a report and recommendation  
6 of a magistrate judge are set forth in Federal Rule of Civil Procedure 72(b) and 28  
7 U.S.C. § 636(b). The district judge must “make a de novo determination of those  
8 portions of the report ... to which objection is made,” and “may accept, reject, or  
9 modify, in whole or in part, the findings or recommendations made by the magistrate.”  
10 28 U.S.C. § 636(b). The district court need not review de novo those portions of a  
11 Report and Recommendation to which neither party objects. *See Wang v. Masaitis*, 416  
12 F.3d 992, 1000 n.13 (9th Cir. 2005); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121  
13 (9th Cir. 2003) (en banc) (“Neither the Constitution nor the [Federal Magistrates Act]  
14 requires a district judge to review, de novo, findings and recommendations that the  
15 parties themselves accept as correct.”).

16 The Court has reviewed the Report and Recommendation, the record, and the  
17 submissions of the parties. The Court finds that the Magistrate Judge correctly  
18 recommended that Respondent’s motion to dismiss be granted and that Petitioner’s First  
19 Amended Petition be dismissed with prejudice and not be construed as a Section 1983  
20 Complaint. The Report and Recommendation is adopted in its entirety.

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1 **III. Conclusion**

2 IT IS HEREBY ORDERED that the Report and Recommendation (ECF No. 22)  
3 is ADOPTED in its entirety. Respondent's Motion to Dismiss the Amended Petition  
4 for Writ of Habeas Corpus (ECF No. 19) is GRANTED. The First Amended Petition  
5 for Writ of Habeas Corpus (ECF No. 17) is DISMISSED WITH PREJUDICE, but  
6 without prejudice to Petitioner filing a complaint pursuant to 42 U.S.C. section 1983  
7 in a court of proper venue. The Clerk of the Court shall close the case and enter  
8 judgment for Respondent and against Petitioner.

9 DATED: June 19, 2015

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11 **WILLIAM Q. HAYES**  
12 United States District Judge  
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